

Message Text

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ORIGIN EB-07

INFO OCT-01 ISO-00 STR-04 AF-06 ARA-10 EA-10 EUR-12 NEA-09

FEA-01 AGR-10 CEA-01 CIAE-00 COME-00 DODE-00 FRB-01

H-02 INR-07 INT-05 L-02 LAB-04 NSAE-00 NSC-05 PA-02

AID-05 CIEP-02 SS-15 TAR-01 TRSE-00 USIA-15 PRS-01

SP-02 OMB-01 /141 R

DRAFTED BY EB/OT/GCP:ELWILLIAMS:DI

APPROVED BY EB/OT/GCP:DTMORRISON

EB/OT/TA:WBARRACLOUGH

EB/OT/STA:ECONSTABLE

STR:SLANDE/BSTEINBOCK

----- 029554

R 242212Z FEB 75

FM SECSTATE WASHDC

TO ALL DIPLOMATIC AND CONSULAR POSTS

UNCLAS STATE 041543

INFORM CONSULS

E.O. 11652: N/A

TAGS: ETRD

SUBJECT: TRADE ACT OF 1974 AND THE DEVELOPING COUNTRIES

1. AS INDICATED BY PRESIDENT FORD UPON SIGNING TRADE ACT OF 1974 INTO LAW, THIS IS THE MOST SIGNIFICANT TRADE LEGISLATION PASSED BY THE CONGRESS IN OVER FOUR DECADES. IT RECOGNIZES AS ONE OF ITS SPECIFIC OBJECTIVES THE NEED TO ENTER INTO TRADE AGREEMENTS WHICH PROMOTE, INTER ALIA, THE ECONOMIC GROWTH OF THE DEVELOPING COUNTRIES AND ENABLES THE U.S. TO CARRY OUT ITS COMMITMENT TO THE DEVELOPING COUNTRIES UNDERTAKEN IN THE TOKYO DECLARATION.
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MUCH CONTROVERSY SURROUNDS THE TRADE ACT'S PROVISIONS ESTABLISHING ELIGIBILITY CRITERIA FOR COUNTRIES TO RECEIVE THE BENEFITS OF TITLE V (GENERALIZED TARIFF PREFERENCES), WHICH IS INTENDED TO PROVIDE

PREFERENTIAL ACCESS FOR PRODUCTS OF DEVELOPING COUNTRIES IN THE U.S. MARKET. HOWEVER, MANY DEVELOPING COUNTRIES HAVE OVERLOOKED OTHER PROVISIONS OF THE ACT WHICH, EITHER DIRECTLY OR INDIRECTLY, CAN BE EXPECTED TO YIELD SIGNIFICANT BENEFITS FOR THEIR TRADE AND GIVE EFFECT TO THE ACT'S DEVELOPMENT OBJECTIVES. THIS MESSAGE, WHICH SUPPLEMENTS PREVIOUS GUIDANCE, IDENTIFIES THE MOST IMPORTANT OF THESE PROVISIONS AND PROVIDES ADDITIONAL BACKGROUND FOR POSTS TO AID DISCUSSION WITH HOST GOVERNMENT OFFICIALS, PARTICULARLY IN THE DEVELOPING COUNTRIES, CONCERNING ASPECTS OF TRADE ACT BESIDES GSP.

2. TRADE NEGOTIATIONS. OF PRIMARY IMPORTANCE IS THE ACT'S AUTHORITY TO PROCEED WITH MULTILATERAL TRADE NEGOTIATIONS (MTN) LEADING TO MORE OPEN WORLD TRADING SYSTEM THROUGH REDUCTION OF BARRIERS TO TRADE. THE MTN WILL INFLUENCE STRUCTURE OF GLOBAL TRADE OVER THE LONG TERM AND WILL AFFECT EXPORT INTERESTS OF ALL COUNTRIES, INCLUDING THE DEVELOPING COUNTRIES. THESE NEGOTIATIONS CAN INITIALLY PROVIDE NECESSARY COUNTERWEIGHT TO WIDESPREAD PROTECTIONIST TENDENCIES, WHICH COULD BE DETRIMENTAL TO THE INTERNATIONAL ECONOMY AND PARTICULARLY HARMFUL TO DEVELOPMENT PROSPECTS OF LDC'S.

3. WHILE GENERALIZED TARIFF PREFERENCES WILL BE HELPFUL OVER THE SHORT RUN IN ENCOURAGING EXPANSION AND DIVERSIFICATION OF DEVELOPING COUNTRY EXPORTS, MULTILATERAL TRADE NEGOTIATIONS NOW MADE POSSIBLE BY TRADE ACT ARE EXPECTED TO COVER A BROADER RANGE OF PRODUCTS AND SHOULD HAVE CONSIDERABLY MORE LASTING IMPORTANCE FOR LDC TRADE THAN THE TRANSITIONAL BENEFITS OF GSP. GSP AND MOST-FAVORED-NATION (MFN) TARIFF CONCESSIONS ARE TWO VERY DIFFERENT APPROACHES TO TRADE LIBERALIZATION BUT TAKEN TOGETHER SHOULD WORK IN COMPLEMENTARY WAYS TO PROVIDE ADDITIONAL BENEFITS FOR THE DEVELOPING COUNTRIES. FOR EXAMPLE, THE U.S. IS UNABLE TO GIVE GSP ON A NUMBER OF PRODUCTS OF UNCLASSIFIED

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SUBSTANTIAL INTEREST TO LDC'S BUT WILL IN MANY CASES BE IN A POSITION TO NEGOTIATE TARIFF REDUCTIONS ON THESE PRODUCTS IN THE MTN BECAUSE OF STAGING REQUIREMENTS AND THE FACT THAT MFN TARIFF CUTS ARE NOT ALWAYS TO ZERO.

4. GSP IS TEMPORARY AND NONBINDING, AND MAY BE WITHDRAWN AT ANY TIME. FURTHERMORE, MOST MAJOR PREFERENCE SYSTEMS HAVE QUANTITATIVE CEILINGS WHICH TRIGGER A RETURN TO MFN RATES. BECAUSE OF THIS POSSIBILITY, IT WILL BE IN THE INTEREST OF THE DEVELOPING COUNTRIES TO SEEK MFN CONCESSIONS IN MTN ON AS MANY ITEMS AS POSSIBLE, INCLUDING THOSE

ELIGIBLE FOR GSP.

5. TARIFF CUTTING AUTHORITY. TRADE ACT AUTHORIZES REDUCTION TO ZERO OF DUTIES NOW AT FIVE PERCENT AD VALOREM OR LESS AND PERMITS CUTS OF UP TO 60 PERCENT ON RATES ABOVE FIVE PERCENT LEVEL. THIS MANDATE IS THE LARGEST IN PERCENTAGE TERMS THAT HAS EVER BEEN DELEGATED TO U.S. NEGOTIATORS AND PUTS U.S. IN POSITION TO PARTICIPATE WITH OTHER COUNTRIES IN SUBSTANTIAL REDUCTION OF HIGH AND MODERATE DUTIES REMAINING IN NATIONAL TARIFF STRUCTURES AND IN COMPLETE ELIMINATION OF LOW DUTIES. AS INDICATED BY U.S. DEL AT FEBRUARY 11 MEETING OF TRADE NEGOTIATIONS COMMITTEE U.S. INTENDS TO MAKE MAXIMUM POSSIBLE USE OF ITS TARIFF NEGOTIATING AUTHORITY TO GRANT CONCESSIONS ON PRODUCTS OF SPECIAL INTEREST TO THE DEVELOPING COUNTRIES.

6. NON-TARIFF BARRIER (NTB) NEGOTIATING AUTHORITY. TRADE ACT CONTAINS AUTHORITY TO ENTER INTO NTB AGREEMENTS WHICH MUST BE IMPLEMENTED BY THE CONGRESS THROUGH LEGISLATION. U.S. NEGOTIATORS HAVE ALREADY INDICATED THAT U.S. BARRIERS ARE ON THE TABLE FOR POSSIBLE LIBERALIZATION, INCLUDING STANDARDS, SUBSIDIES AND GOVERNMENT PROCUREMENT PRACTICES WHICH CAN ADVERSELY AFFECT TRADE OF THE DEVELOPING COUNTRIES. THERE ARE POTENTIAL BENEFITS FOR DEVELOPING COUNTRIES IN THIS AREA THROUGH LIBERALIZED ACCESS TO THE MARKETS OF UNCLASSIFIED

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INDUSTRIALIZED COUNTRIES.

7. ADJUSTMENT ASSISTANCE PROVISIONS. BOTH TARIFF PREFERENCES AND NEGOTIATED REDUCTIONS HAVE LESS VALUE IF ESCAPE CLAUSE ACTIONS (WHICH PERMIT IMPOSITION OF QUOTAS OR INCREASES IN TARIFFS TO GIVE IMPORT RELIEF TO A PARTICULAR DOMESTIC INDUSTRY) ARE REPEATEDLY INVOKED. A LIBERALIZED INTERNATIONAL TRADING SYSTEM, WHICH INCLUDES PROVISION FOR GREATER ACCESS BY DEVELOPING COUNTRIES TO INDUSTRIALIZED COUNTRY MARKETS, NECESSITATES EFFECTIVE DOMESTIC ADJUSTMENT TO NEW COMPETITIVE CONDITIONS.

TITLE II OF THE TRADE

ACT ESTABLISHES AN IMPROVED PROGRAM OF ADJUSTMENT ASSISTANCE FOR U.S. WORKERS, FIRMS, AND COMMUNITIES AFFECTED BY IMPORTS. THIS PROGRAM CAN HELP TO MAINTAIN THE VALUE OF TARIFF CONCESSIONS AND OF GENERALIZED PREFERENCES BY REDUCING THE PRESSURE FOR ESCAPE-CLAUSE ACTIONS. WITH IMPROVED ADJUSTMENT ASSISTANCE MEASURES PROVIDING THE NECESSARY DOMESTIC UNDERPINNING, U.S. IS IN A BETTER POSITION TO ENGAGE IN INCREASINGLY OPEN TRADE WITH DEVELOPING AREAS.

8. COUNTERVAILING DUTIES. TRADE ACT INCORPORATES SIGNIFICANT CHANGES IN COUNTERVAILING DUTY LAW WHICH NOT ONLY REFLECT DESIRE OF CONGRESS TO RESOLVE CASES UNDER LAW MORE EXPEDITIOUSLY, BUT ALSO RECOGNIZE POTENTIALLY ADVERSE EFFECT THAT COUNTERVAILING DUTY ACTIONS COULD HAVE ON MULTILATERAL TRADE NEGOTIATIONS IN LIMITED SITUATIONS. ULTIMATE IMPACT OF THESE CHANGES ON DEVELOPING COUNTRY EXPORTS TO THE U.S. CANNOT BE DETERMINED A PRIORI. SOME OF CHANGES MAY PROVE HELPFUL, WHILE OTHERS COULD HAVE NEGATIVE IMPACT. (SEE STATE 29145 FOR DETAILED GUIDANCE CONCERNING COUNTERVAILING DUTY LAW PROVISIONS OF TRADE ACT.)

9. FURTHERMORE, COUNTERVAILING DUTY STATUTES REQUIRE TREASURY TO REACH A FINAL DECISION WITHIN TWELVE MONTHS AFTER A PETITION HAS BEEN RECEIVED. HOWEVER, IN THE INTEREST OF ENCOURAGING SUCCESSFUL NEGOTIATION OF NTB AGREEMENTS, THE ACT GIVES SECRETARY OF THE TREASURY UNCLASSIFIED

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LIMITED DISCRETION (SUBJECT TO VETO BY EITHER THE SENATE OR THE HOUSE) IN REFRAINING FROM IMPOSITION OF COUNTERVAILING DUTIES DURING THE FOUR-YEAR PERIOD ENDING JANUARY 3, 1979. HE MUST SPECIFICALLY DETERMINE THAT (A) ADEQUATE STEPS HAVE BEEN TAKEN TO REDUCE SUBSTANTIALLY OR ELIMINATE ADVERSE EFFECTS OF ANY BOUNTIES OR GRANTS FOUND TO EXIST; (B) SUCCESSFUL NON-TARIFF BARRIER NEGOTIATIONS ARE LIKELY AND (C) THE IMPOSITION OF DUTIES WOULD SERIOUSLY JEOPARDIZE SUCH NEGOTIATIONS. WHILE WE ANTICIPATE THAT THIS AUTHORITY WILL BE USED ONLY IN A LIMITED NUMBER OF CASES, WE BELIEVE IT CAN BE USEFUL IN FACILITATING INTERNATIONAL AGREEMENT ON SUBSIDIES AND COUNTERVAILING DUTIES, BOTH OF WHICH WILL BE SUBJECT OF NEGOTIATION IN MTN.

10. OF PARTICULAR INTEREST TO DEVELOPING COUNTRIES IN CONNECTION WITH NTB NEGOTIATIONS WILL BE SECTION 102(F) OF ACT WHICH GRANTS PRESIDENT AUTHORITY TO DIFFERENTIATE BETWEEN COUNTRIES AND CLASSES OF COUNTRIES (E.G., DEVELOPING AND INDUSTRIALIZED) FOR PURPOSE OF DETERMINING BENEFITS AND OBLIGATIONS UNDER NTB AGREEMENTS. THIS APPROACH IS IN KEEPING WITH

RECOGNITION BY THE U.S. AND OTHER INDUSTRIALIZED COUNTRIES, AS EXPRESSED IN TOKYO DECLARATION LAUNCHING MTN, OF THE IMPORTANCE OF APPLICATION OF DIFFERENTIAL MEASURES TO DEVELOPING COUNTRIES IN WAYS WHICH WILL PROVIDE SPECIAL AND MORE FAVORABLE TREATMENT TO THEM IN THE NEGOTIATIONS WHERE FEASIBLE AND APPROPRIATE.

11. OTHER AUTHORITIES OF TRADE ACT HAVING SIGNIFICANT

IMPLICATIONS FOR DEVELOPING COUNTRY TRADE ARE AS FOLLOWS:

A. COMPENSATION AUTHORITY: TRADE ACT PROVIDES U.S. SPECIFIC AUTHORITY TO GRANT COMPENSATION FOR IMPAIRMENT OF BOUND RATES RESULTING, FOR EXAMPLE, FROM IMPORT RELIEF (ESCAPE CLAUSE) ACTIONS TAKEN UNDER SECTION 203. THIS AUTHORITY CAN HELP TO MAINTAIN THE BALANCE OF NEGOTIATED CONCESSIONS.

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B. GATT REFORM: THE DEVELOPING COUNTRIES SHARE WITH THE U.S. AND OTHER INDUSTRIALIZED COUNTRIES A COMMON INTEREST IN NEGOTIATING REVISIONS OF GOALS AND PROCEDURES EMBODIED IN THE GATT TO TAKE ACCOUNT OF CURRENT GLOBAL ECONOMIC REALITIES. WITH ALMOST 75 PERCENT OF THEIR FOREIGN EXCHANGE COMING FROM EXPORTS, THE DEVELOPING COUNTRIES HAVE AN EXCEEDINGLY LARGE STAKE IN THE INTERNATIONAL TRADING SYSTEM. TRADE ACT ENABLES U.S. TO CONCERT WITH OTHER COUNTRIES IN CREATING MORE COMPREHENSIVE AND EFFECTIVE TRADING SYSTEM WHICH WILL PROVIDE FOR CONSTRUCTIVE AND PERMANENT INVOLVEMENT OF THE DEVELOPING COUNTRIES.

C. IN ADDITION, MTN OFFERS ALL COUNTRIES OPPORTUNITY TO TAKE CRITICAL LOOK AT THEIR OWN TRADE BARRIERS WHICH CAN CONSTITUTE FORMIDABLE OBSTACLE TO RATIONAL DEVELOPMENT OF BOTH HUMAN AND NATURAL RESOURCES. CONTRIBUTIONS BY DEVELOPING COUNTRIES, CONSISTENT WITH TOKYO DECLARATION, CAN BE SELECTED WITH OBJECTIVE OF RATIONALIZATION AS IMPORTANT CRITERION.

12. GENERALIZED PREFERENCES. POSITIVE ASPECTS OF TITLE V (GSP) SHOULD NOT BE OVERLOOKED. IT HAS DEFINITE ADVANTAGES FOR THE DEVELOPING COUNTRIES AND IS AN EFFECTIVE MEASURE FOR PROMOTING ECONOMIC DEVELOPMENT. CRITICISM OVER ELIGIBILITY REQUIREMENTS OF TITLE V SHOULD NOT DETRACT FROM THE UTILITY OF ITS BENEFITS. IN FACT, ALMOST ALL DEVELOPING COUNTRIES ARE NOW ELIGIBLE AND IT IS OUR EXPECTATION THAT OTHERS WILL BE ADDED. UNLIKE OTHER DONOR COUNTRY SCHEMES, THE U.S. SYSTEM PROVIDES FOR ZERO DUTY ON ALL ELIGIBLE PRODUCTS AND ALL BENEFICIARY COUNTRIES HAVE AN OPPORTUNITY TO PARTICIPATE IN THE SYSTEM UP TO THE COMPETITIVE NEED CEILINGS (I.E., UP TO 25 MILLION DOLLARS OR 50 PERCENT). WITH RESPECT TO PRODUCT COVERAGE, WE ANTICIPATE SENDING TO THE INTERNATIONAL TRADE COMMISSION FOR REVIEW AND RECOMMENDATION A LARGE LIST CONSISTING OF MOST MANUFACTURES NOT EXCLUDED STATUTORILY, AND SELECTED AGRICULTURAL AND PRIMARY PRODUCTS. MORE DETAILED STATEMENT ON GSP IS PROVIDED IN STATE 11522. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE LAW, LESS DEVELOPED COUNTRIES
Control Number: n/a
Copy: SINGLE
Draft Date: 24 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE041543
Document Source: ADS
Document Unique ID: 00
Drafter: EB/OT/GCP:ELWILLIAMS:DI
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D750065-0964
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750287/baaaagsi.tel
Line Count: 273
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ElyME
Review Comment: n/a
Review Content Flags:
Review Date: 14 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14 MAY 2003 by RuthemTJ>; APPROVED <08 JAN 2004 by ElyME>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: ETRD, US, XX
To: ALL DIPLOMATIC AND CONSULAR POSTS
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006